ABLE OILS & FATS SDN BHD v. TAN SEE MENG & ORS

HIGH COURT MALAYA, KUALA LUMPUR
ONG CHEE KWAN J
[SUIT NO: WA-22NCC-246-06-2022]
8 APRIL 2024

Abstract – *A failure to comply with the terms of orders and judgments of courts would attract commencement of committal proceedings against the offending party. This is more so, when the disobedience is intentional and deliberate and without appropriate justification proffered for such non-compliance. The court may dispense with personal service of judgments to parties who have deliberately committed contempt of court if it is proven that the parties have personal knowledge of the judgments and also when the parties are being represented by counsel. Despite having knowledge of the judgment and compliance is strictly warranted, any act of wilful disobedience constitutes a contempt of court.*

CIVIL PROCEDURE: *Contempt of court – Order of committal – Prima facie contempt of court – Intentional and deliberate refusal to comply with terms and order of judgment of court – Whether personal service of judgment required – Whether there were just grounds for court to dispense with personal service – Whether conduct post judgment amplified contumelious and wilful refusal to comply with terms of judgment – Whether good reason or acceptable justification given for non-compliance with judgment – Whether application for stay filed late – Whether there was deliberate refusal without good reasons to comply with terms of judgment – Whether act of contempt established – Rules of Court 2012, O. 47 r. 7(2), (7), O. 52 r. 4*

Enclosure 97 was the notice of application filed under O. 52 r. 4 of the Rules of Court 2012 ('ROC') based on the *prima facie* contempt of court on the part of the first, second and third defendants for intentionally and deliberately refusing to comply with the terms and orders of the judgment granted by this court. The first to third defendants had not applied to set aside the *ex parte* leave order under encl. 96, and thus did not challenge that there was a *prima facie* case of contempt to be heard and determined by this court. The plaintiff had also obtained leave of the Bankruptcy Court under s. 8(1) of the Insolvency Act 1967 ('IA') to commence and proceed with encl. 97 against the first defendant, who was adjudged bankrupt. The first defendant, in the absence of sanction under s. 38(1) of the IA for Messrs Hasshahari & Partners ('Messrs Hasshahari') or any law firm to respond to encl. 97 on his behalf, must be taken to have admitted without qualification to the charge of contempt levelled against him. The defences raised by the defendants in opposing the order of committal were that: (i) they were never personally

served the judgment sought to be enforced and that the judgment was only served on their solicitors; (ii) they were never personally served with the documents relating to these proceedings in encl. 97 and there were no applications for substituted service or any application for exemption for service; (iii) the alleged involvement and interest of a third party, *ie*, the fourth defendant being placed under judicial management made it difficult for the defendants to carry out its obligations; (iv) the second and third defendants had no access to the transfer documents required to be surrendered under the judgment as they were, at all material times, within the control of the first defendant as he was the party dealing directly with the plaintiff's representative in this action; (v) the first defendant no longer had access to the transfer documents as there was a purported physical altercation and he was chased out from his room in the fourth defendant's office, which led to the lodging of a police report; and (vi) according to the terms of the judgment, the plaintiff must refer to the Registrar of the High Court to execute and enforce all the transfer documents under the judgment which the plaintiff had failed to do so by refusing, failing or neglecting to meet with the Registrar.

Held (finding first to third defendants guilty of contempt):

(1) While under O. 45 r. 7(2) of the ROC personal service of the order or judgment on the person sought to be enforced against is required, the court has the power under O. 45 r. 7(7) of the ROC to dispense with personal service of the order or judgment if it thinks just to do so. There were more than sufficient grounds for this court to dispense with personal service of the judgment on the first to third defendants. The defendants were, at all material times, represented by Messrs Hasshahari, and had full knowledge and understanding of the terms of the judgment, which they admitted to have appealed against at the Court of Appeal. The first to third defendants also admitted to non-compliance of the same, whether due to the judicial management of the fourth defendant or the first defendant purportedly not having access to his room at the fourth defendant's office premises. Accordingly, it was just for the personal service of the judgment on the first to third defendants to be dispensed with. (paras 14, 15, 20 & 28)

(2) The service of the encl. 97 cause papers on Messrs Hasshahari was applied for and expressly allowed in the *ex-parte* leave order under encl. 96. Hence, there was no need for the said cause papers to be served personally on the defendants. Also, the defendants, being aware of the *ex-parte* leave order, did not make any application to set aside the same, notwithstanding that the defendants' solicitors had attended the first case management for encl. 97 and all subsequent case managements until the full hearing in respect of the same. Accordingly, there were no merits in the objection made on the failure to serve the encl. 97 cause papers on the defendants personally. (paras 30-32)

(3) The first to third defendants had not explained exactly why and how the fourth defendant's judicial management had prevented them from surrendering or causing to be surrendered to the plaintiff's custody all documents as provided for under the judgment. The order for judicial management made against the fourth defendant was more than a month after the judgment. The defendants were already refusing and/or intentionally disobeying the terms of the judgment even before the appointment of the judicial managers over the fourth defendant. The defendants had not adduced any evidence that steps were taken to communicate with the judicial managers to retrieve the transfer documents in order to comply with the terms of the judgment. (paras 35, 37 & 38)

(4) The defendants never had any intention to comply with the terms of the judgment and were grasping at any events no matter how tenuous simply to justify their failure to comply with the order of this court. Their conduct, post the judgment, amplified their contumelious and wilful refusal to comply with the terms of the judgment. The second and third defendants could not hide behind the first defendant's bankruptcy or plead ignorance or plead that they were merely minority shareholders and not executive directors because all affairs were handled by the first defendant. Further, in reply to the show cause letter, the alleged physical altercation and being deprived of access to his office was never raised as a reason for the non-compliance of the judgment. The first defendant, at all times, had access to his room in the office premises of the fourth defendant, having been authorised to assist the interim judicial managers in managing the fourth defendant's daily operations. (paras 41-45)

(5) The fact that the judgment had made a proviso empowering the Registrar of the High Court to execute and enforce the transfer documents, did not mean that the defendants could disobey the terms of the judgment. The proviso also did not mean that the defendants would not be subject to committal proceedings unless efforts were made to have the Registrar execute the transfer documents. It was not a substitution of the defendants' obligations to comply with the terms of the judgment at all. Hence, the defendant's contention that until and unless the plaintiff had shown that it had taken the necessary steps to have the Registrar execute and enforce the transfer documents, no action for committal could be made against them, was simply untenable. The defendants' interpretation, if accepted, would effectively render the first to third defendants' obligations, to surrender or cause to be surrendered to the plaintiff's, custody the documents required under the judgment, without purpose and redundant. (paras 47-49)

(6) The deliberate refusal without good reasons to comply with the terms of the judgment was an act of contempt. The fact that the first to third defendants may have relied on the advice by their legal counsel, was not an acceptable excuse. There was no evidence of any active and urgent engagement with the company secretaries to comply with the terms of the judgment until the first to third defendants were directed by this court to do so and with the possible custodial sentence hanging over their heads. It clearly showed that the first to third defendants never had the intention to comply with the judgment, let alone to promptly do so. They had not shown any remorse. The court took note of the fact that the contempt had been purged but only after much time had been wasted and opportunities given. Accordingly, the proper sentence was an order that the first to third defendants be each fined a sum of RM25,000 and in default to be imprisoned for seven days. (paras 57, 63, 65, 68 & 69)

Case(s) referred to:

Akira Sales & Services (M) Sdn Bhd v. Nadiah Zee Abdullah & Another Appeal [2018] 2 CLJ 513 FC ***(refd)***

Capital Insurance Bhd v. BS Sidhu [1996] 3 CLJ 477 CA ***(refd)***

Davy International Ltd & Ors v. Tazzyman & Ors [1997] 3 All ER 18 ***(refd)***

Eric Lau Man Hing v. Eramara Jaya Sdn Bhd & Ors [2007] 2 MLJ 578 ***(refd)***

Juris Technologies Sdn Bhd & Anor v. Foo Tiang Sin & Ors [2019] 9 CLJ 617 HC ***(refd)***

Low Swee Siong v. Tan Siew Siew [2011] 9 CLJ 536 HC ***(refd)***

Madlis Azid & Ors v. Chua Yung Kim & Ors [2013] 2 CLJ 110 HC ***(refd)***

Ng Hee Thoong & Anor v. Public Bank Bhd [1995] 1 CLJ 609 CA ***(refd)***

Plastech Industrial Systems Sdn Bhd v. N&C Resources Sdn Bhd & Ors [2013] 9 CLJ 404 HC ***(refd)***

Robert Doran & Ors v. Kuan Pek Seng & Ors [2011] CLJU 670; [2011] 1 LNS 670 HC ***(refd)***

Tan Poh Lee v. Tan Boon Thien [2022] 2 CLJ 719 FC ***(refd)***

Teoh Seow Chiew v. Mega Palm Sdn Bhd & Anor [2021] CLJU 2400; [2021] 1 LNS 2400 HC ***(refd)***

T O Thomas v. Asia Fishing Industry Pte Ltd [1977] CLJU 126; [1977] 1 LNS 126 FC ***(refd)***

Legislation referred to:

Insolvency Act 1967, ss. 8(1), 38(1)

Rules of Court 2012, O. 45 r. 7(2), (7), O. 52 r. 4

For the plaintiff - Lim Koon Huan, Siew Ka Yan & M Nazrin; M/s Skrine

For the defendants - Hasshahari Johari Mawi, Mohd Radzlan Jalaludin & Muhamad Hafizan Shafuan Kamarulzaman; M/s Hasshahari & Partners

Reported by S Barathi

JUDGMENT

Ong Chee Kwan J:

Introduction

[1] On 31 March 2024, this court found the first to the third defendants guilty of contempt for the intentional disobedience of the terms of this court's judgment dated 4 October 2022 ("the judgment") which provided for, *inter alia*:

(i) specific performance of the call option agreements dated 5 March 2021 in respect of the first and second defendants' shares in the fourth defendant, and the first and third defendants' shares in the fifth defendant (collectively referred as "the shares"); and

(ii) the first to the third defendants to surrender or cause to be surrendered documents stipulated in the judgment ("transfer documents") to effect the transfers of the shares.

[2] For the committal of the judgment, I ordered the first to the third defendants to be each fined a sum of RM25,000 to be paid within 21 days from 1 March 2024 and in default to be imprisoned for seven days. The first to the third defendants were further ordered to jointly and severally pay the plaintiff the costs for the committal proceedings in the sum of RM75,000 subject to the allocatur.

[3] The first to the third defendants have complied with the order, paying the sum of RM25,000 each within the stipulated time.

[4] Thereafter, the first to the third defendants have filed an appeal against my decision.

Background Facts

[5] Enclosure 97 is the notice of application filed under O. 52 r. 4 of the Rules of Court 2012 based on the *prima facie* contempt of court on the part of the first, second and third defendants for intentionally and deliberately refusing to comply with the terms and orders of the judgment granted by this court, *to wit*:

(i) the first and/or the second defendants' refusal to carry out specific performance of the call option agreement dated 5 March 2021 in respect of the shares in the fourth defendant, by refusing to surrender and/or cause to be surrendered to the plaintiff all documents as stated in the amended Schedule 1 and re-amended Schedule 1A to the judgment; and

(ii) the first and/or the third defendants' refusal to carry out specific performance of the call option agreement dated 5 March 2021 in respect of the shares in the fifth defendant, by refusing to surrender and/or cause to be surrendered to the plaintiff all documents as stated in the re-amended Schedule 2 and re-amended Schedule 2A to the judgment.

[6] The first to the third defendants have not applied to set aside the *ex parte* leave order under encl. 96, and thus does not challenge that there is a *prima facie* case of contempt to be heard and determined by this court.

[7] It is also to be noted that the first defendant was adjudged a bankrupt on 24 March 2023 and the plaintiff had duly obtained leave of the bankruptcy court under s. 8(1) of the Insolvency Act 1967 on 20 June 2023 to commence and proceed with encl. 97 against the first defendant.

[8] The first defendant has failed any affidavits to reply to encl. 97. Enclosure 102 which was affirmed by the second defendant on 15 November 2023 states very clearly as follows:

> 1. Saya adalah Defendan Kedua di dalam tindakan ini dan saya juga mempunyai kebenaran untuk mengikrarkan Afidavit in **melainkan untuk Defendan Pertama.** (emphasis added)

[9] Further, the first defendant has not obtained sanction of the Director General of Insolvency under s. 38(1) of the Insolvency Act 1967 for Messrs Hasshahari & Partners or any law firm to respond to encl. 97 on his behalf. In this regard, the Federal Court in *Akira Sales & Services (M) Sdn Bhd v. Nadiah Zee Abdullah & Another Appeal* [2018] 2 CLJ 513 clearly held at para. [20]:

> [20] Sanction is not required to challenge an order in bankruptcy. **But where s. 38(1)(a) applies, an undischarged bankrupt must obtain the previous sanction of the DGI to institute a claim** (*Dato' Kuah Tian Nam v. Tan Wrun Peng* [2009] 1 LNS 702; [2009] 9 MLJ 464), **file a counter-claim** (*Goh Eng Hwa v. Laksamana Realty* per Abdul Hamid Mohamad FCJ, as he then was), **defend an action** (*Kesang Leasing Sdn Bhd v. Dato' Hj Mat @ Mat Shah Ahmad & Ors (No 2)* [2009] 1 LNS 74; [2009] 7 MLJ 305), **maintain the action and continue with the case** (*Priyakumary Muthucumaru & Anor v. Gunasingam Ramasingam (A Bankrupt)* [2006] 4 CLJ 458; [2006] 6 MLJ 511), "commence an action by writ or by any of the mode provided in O. 5 r. 1" (Bankruptcy Law in Malaysia and Singapore by GK Ganesan at p. 547) or file an appeal (*Amos William Dawe v. Development & Commercial Bank*; see also *Owens v. Comlaw Pty Ltd* [2006] VSCA 151 at [42], where on s. 60(2) of the Bankruptcy Act 1966 which operates to stay an action which is on foot at the time when a person is made bankrupt until the trustee makes an election to prosecute or discontinue the same and on s. 60(5) of the Bankruptcy Act 1966 which defines **'action' as "any civil proceeding whether at law or in equity"**, Ashley JA (Redlich JA in agreement) said that "action is apt to include an appeal", and, *Cummings v. Claremont Petroleum & Anor* [1996] 137 ALR 1, where on the same said ss. 60(2) and (5) of the Bankruptcy Act 1966, Brennan CJ, (Gaudron and McHugh JJ in agreement) said "The institution of an appeal by a defendant against a judgment in favour of a plaintiff is the commencing of a proceeding. That follows from the decision of the full court of the Supreme Court of New South Wales in *Want v. Moss*").
>
> (emphasis added)

[10] As such, the first defendant must be taken to have admitted without qualification to the charge of contempt as levelled against him and as detailed in encls. 92, 93, 97 and 103. All the averments in encl. 93 stand unchallenged and uncontroverted and are to be taken as the truth of the matter against the first defendant. This principle is trite according to the Court of Appeal case of *Ng Hee Thoong & Anor v. Public Bank Bhd* [1995] 1 CLJ 609; [1995] 1 MLJ 281.

Defences Raised To Oppose Encl. 97

[11] The defendants raised the following defences to oppose the order of committal against them under encl. 97:

(i) that they were never personally served the judgment sought to be enforced and that the judgment was only served on their solicitors;

(ii) that they were never personally served with the documents relating to these proceedings in encl. 97 and there were no applications for substituted service or any application for exemption for service;

(iii) that the alleged involvement and interest of a third party, *ie*, the fourth defendant being placed under judicial management made it difficult for the defendants to carry out its obligations;

(iv) that the second and third defendants had no access to the transfer documents required to be surrendered under the judgment as they were at all material times within the control of the first defendant as he was the party dealing directly with the plaintiff's representative in this action;

(v) that the first defendant no longer had access to the transfer documents as there was a purported physical altercation and he was chased out from his room in the fourth defendant's office, which led to the lodging of police report on 8 December 2022; and

(vi) according to the terms of the judgment, the plaintiff must refer to the Registrar of the High Court to execute and enforce all the transfer documents under the judgment which the plaintiff had failed to do so by refusing, failing or neglecting to meet with the Registrar.

[12] Significantly from the aforesaid, it can be seen that the defendants are not claiming that they had no knowledge of the judgment and/or that they had complied with the terms of the judgment.

[13] I shall now address each of the defences and/or objections raised in turn.

A **No Personal Service Of The Judgment On The First To The Third Defendants**

[14] While the general rule under O. 45 r. 7(2) of the Rules of Court 2012 and as held in the Court of Appeal case of *Capital Insurance Bhd v. BS Sidhu* [1996] 3 CLJ 477; [1996] 3 MLJ 1, personal service of the order or judgment B on the person sought to be enforced against is required, the court does have the power under O. 45 r. 7(7) of the Rules of Court 2012 to dispense with personal service of the order or judgment if it thinks just to do so.

[15] On the present facts, there are more than sufficient grounds for this C court to dispense with personal service of the judgment on the first to the third defendants. It is crystal clear and in fact not denied that the first to the third defendants have personal knowledge of the judgment. In fact, they have admitted to non-compliance of the same, whether due to the judicial management of the fourth defendant or the first defendant purportedly not having access to his room at the fourth defendant's office premises.

D **[16]** In the Federal Court case of *T O Thomas v. Asia Fishing Industry Pte Ltd* [1977] CLJU 126; [1977] 1 LNS 126; [1977] 1 MLJ 151, the court referred to English cases and said as follows:

> *In the matter of contempt arising out of disobedience to an order of injunction of court* E *the test is to ask whether the defendant knows of it. It need not be necessary that he should be served.* Thus in *United Telephone Co. v. Dale* [1884] 25 Ch. D 778, 786. Pearson J said:
>
> > In no case will the court enforce obedience to its injunction by means of a committal to prison, *simply upon the ground that the order* F *has not been served, when it appears beyond all doubt or dispute that the defendant is aware* that the injunction has been granted, and that it is the intention of the plaintiff to enforce it.
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> Key J in *Avery v. Andrew* [1879] 13 Ch. D 110, 119 expressed the same view but in stronger words:
>
> G > What is the necessity for serving an order upon a defendant, *if he knows perfectly well without that service what it is which he is bound to obey?*
>
> *Wilfully, disobeying an order of the court constituted contempt. This commonly consists in a party's doing otherwise than he is enjoined to do, or not doing what he is commanded or required to do by the process, order or decree of the court: Miller* H *v. Knox (1838) 4 Bing NC 574. The contempt must be wilful.* An order of court must have been contumaciously disregarded. It is no good if it is casual, accidental and unintentional. *Fairclough & Sons v. Manchester Ship Canal Co (No 2)* [1897] WN 7. (emphasis added)

[17] In the High Court case of *Teoh Seow Chiew v. Mega Palm Sdn Bhd & Anor* [2021] CLJU 2400; [2021] 1 LNS 2400; [2021] MLJU 2683, the I alleged contemnors sought to set aside the *ex parte* leave order for committal proceedings on the grounds, *inter alia*, that the applicants failed to personally

serve the consent order (the breach of which was the basis of the contempt) on them. Instead, the consent order was simply handed over at the office premises of the first defendant company and after the time for compliance had expired. Nonetheless, the court considered, *inter alia,* averments by the alleged contemnors explaining their responses to the categories of breaches which readily demonstrate that they had received the consent order and have full knowledge of the terms therein, the alleged contemnors are estopped from contending otherwise. That being said, the court also went further to say that in any event, even for argument's sake, there was no personal service, the court may "justifiably dispense personal service under O. 45 r. 7(7) of the RC 2012 because the directors can be said to have had knowledge of and admitted to non-compliance with the consent order" and went on further to say:

> [105] Given all that, *it is tenuous and disingenuous* for the alleged contemnors, *with legal representation, to now claim not to have knowledge of the Consent Order,* at least constructive if not but more likely full and actual. This Court considered it to *be fair and just to dispense personal service as the directors clearly had knowledge of and had even admitted to non-compliance with the terms of the Consent Order. Retrospective dispensation of service of the Consent Order is allowed under Order 45 r 7(7) which permits the Court to dispense with service of a copy of the Order if it thinks it is just to do so.* (emphasis added)

[18] Similarly, in *Plastech Industrial Systems Sdn Bhd v. N&C Resources Sdn Bhd & Ors* [2013] 9 CLJ 404; [2013] 10 MLJ 837, the High Court held that the alleged contemnor in that case had constructive knowledge and notice of the terms of the judgment and order notwithstanding that the same was not served personally. This was evidenced by the alleged contemnor's own conduct in formally applying for a stay of the judgment, the fact that he quoted the terms of the judgment and order *verbatim* in his stay application and that he was at all material times represented by solicitors. Crucially, the court emphasised O. 45 r. 7(7) of the Rules of Court 2012 on dispensation of personal service of the order and exercised this provision in view of the alleged contemnor's obvious earlier knowledge of the order. A similar rationale was also adopted by the High Court in *Madlis Azid & Ors v. Chua Yung Kim & Ors* [2013] 2 CLJ 110.

[19] The dispensation of service of the order can be granted prospectively or retrospectively. In the case of *Robert Doran & Ors v. Kuan Pek Seng & Ors* [2011] CLJU 670; [2011] 1 LNS 670, the High Court referred to the analysis in the English case of *Davy International Ltd & Ors v. Tazzyman & Ors* [1997] 3 All ER 183 and distinguished the local Court of Appeal case of *Capital Insurance* (*supra*):

> With respect, I am not persuaded of the correctness of the local decisions because the decision of the Appeal Court in *Capital Insurance* was based on the *ratio* of *Gordon v. Gordon* and as explained by LJ Morritt, *Gordon v. Gordon* was a decision based on the matrimonial Causes Rule 1944 which did not include the rule identical to O. 45 r. 7. *Gordon v. Gordon* was

considered and distinguished by the Court in *Turner v. Turner*. For this reason, I am not bound to follow the decision of the Court of Appeal in *Capital Insurance*. The decision of the High Court in *Woodsville*, with respect, is of no assistance because the Court did not set out to interpret O. 45 r. 7(7).

In my judgment, once it is acknowledged that O. 45 r. 7(7) permits the applicant to cite the Respondents in Enclosures 112, 113 and 114 for contempt notwithstanding that the orders of Court were not served on them and for dispensation from service to be granted retrospectively, then, the Court's first duty is to determine whether it should dispense with service retrospectively on the facts of this case. The discretion to be exercised in favour of such retrospective dispensation only if the Court "thinks it just to do so." (emphasis added)

[20] Applying the principles in the aforesaid cases, the defendants, were at all material times, represented by Messrs Hasshahari & Partners and had full knowledge and understanding of the terms of the judgment, which they admitted they had appealed against in Court of Appeal Civil Appeal No. W-02(IM)(NCC)-2041-10-2022.

[21] In fact, on the defendants' instructions, there were several without prejudice written correspondences exchanged after the judgment between parties' solicitors attempting to settle the matter but was unsuccessful. This showed that the first to the third defendants had full knowledge of the terms of the judgment and were making offers to the plaintiff in attempt to settle the matter.

[22] Further, on 4 January 2023, prior to the filing of encl. 92 and notwithstanding the fact that the defendants were at all material times represented by Messrs Hasshahari & Partners, the plaintiff's solicitors issued and served a show cause letter to the first to the third defendants even though it was not mandatory to do so according to the Federal Court case of *Tan Poh Lee v. Tan Boon Thien* [2022] 2 CLJ 719. The purpose of the show cause letter was to put on record that the judgment had been duly served on their solicitors, the terms of which are well within their knowledge, and gave the first to the third defendants a final chance to explain why they should not be committed to prison or fined for their contemptuous and contumelious conduct in deliberately and intentionally refusing to comply with such terms.

[23] On 9 January 2023, the first to the third defendants instructed Messrs Hasshahari & Partners to reply to the show cause letter *via* the reply to show cause letter, stating as follows:

We have our clients' instructions to reply as follows:

1. Pursuant to the Kuala Lumpur High Court Order dated 22.11.2022, our clients are currently unable to comply with the Court Order dated 4.10.2022,

2. Within your client's full knowledge, your client failed to inform the court in this proceeding on the existence of the CIMB Bank's interest in which will render the Call Option Agreements and all related documents executed between your client and our clients void; and

3. Your client's conduct in obtaining the Judgment dated 4.10.2022 was based on a void Agreements.

[24] The contents of the defendants' reply to the show cause letter were, as can be seen above, a reflection of the defendants' utter disrespect of the judgment. The reply to the show cause letter was not only misconceived in respect of the irrelevant and non-existent connection between the interim judicial management order the fourth defendant was under (which was obtained after the judgment) and the call option agreements, but also *prima facie* contumelious and contemptuous for insisting the position that the call option agreements are void in the face of the judgment which called for specific performance of the call option agreements and which judgment had not been set aside, or reversed and the execution of the same not stayed despite there being an appeal against it.

[25] The plaintiff replied to the reply to show cause letter *via* letter dated 10 January 2023 issued by Messrs Skrine, explaining clearly, *inter alia*:

…

(b) CIMB Bank Berhad ("CIMB") is an existing creditor of Sawit Raya Sdn Bhd ("SRSB") way before our client entered into the Call Option Agreements dated 5 March 2021 with your clients to purchase all the shares of SRSB and Kian Huat Oilmills Sdn Bhd ("KHOSB").

(c) Without relitigating the same over correspondence, our client wishes to put on record that the KL Suit was commenced by our client against your clients particularly Tan See Meng, Tan See Nong and Lim Peck Hong for amongst others, wrongful termination and/or refusal to carry out the terms of the Call Option Agreements. SRSB and KHOSB were named as nominal defendants in the KL Suit. The Summary Judgment ordering specific performance of the Call Option Agreements obliges Tan See Meng, Tan See Nong and Lim Peck Hong to surrender the Transfer Documents to our client.

(d) The Kuala Lumpur High Court Order dated 22 November 2022 obtained *ex-parte* by CIMB to place SRSB in interim judicial management ("IJM Order") was in exercise of CIMB's rights as SRSB's creditor under the Companies Act 2016. The IJM Order does not prohibit or prevent Tan See Meng, Tan See Nong and Lim Peck Hong from complying with the terms of the Summary Judgment, *ie*, to surrender the Transfer Documents to our client.

(e) It has also not escaped our client's attention that your clients', *to wit*, Tan See Meng, Tan See Nong and Lim Peck Hong's obligation to comply with the terms of the Summary Judgment commenced from the date of pronouncement of the Summary Judgment itself, *ie*, on 4 October 2022. Your clients refused to do so.

A 3. Hence, your clients' excuse that an IJM Order is in place to avoid complying with the terms of the Summary Judgment is unsatisfactory and untenable.

[26] Notwithstanding the aforesaid, the first to the third defendants continued to steadfastly refuse to comply with the terms of the judgment, B prompting the plaintiff to proceed to file encl. 92 on 16 February 2023 and obtained the *ex parte* leave order under encl. 96 on 21 March 2023.

[27] In the light of the aforesaid, it is my judgment that there is no prejudice occasioned to the first to the third defendants in respect of the service of the judgment on their solicitors who are still acting for them today (aside from C the first defendant).

[28] Accordingly, it is just for this court to dispense with personal service of the judgment on the first to the third defendants, bearing in mind the above considerations and that the suit was first initiated by the plaintiff against the first to the third defendants for, *inter alia*, their wrongful termination D and/or refusal to carry out the terms of the call option agreements.

No Personal Service Of The Enclosure 97 Cause Papers On The First To The Third Defendants

[29] Enclosures 96 (*ie*, the *ex parte* leave order) and 97 (*ie*, the *inter partes* E notice of application for committal orders) were served together with the encls. 92, 93, 94 on Messrs Hasshahari & Partners on 3 April 2023. This was allowed under the terms of encl. 96 as applied for by the plaintiff:

> … DAN ADALAH DIPERINTAHKAN SELANJUTNYA bahawa penyampaian Notis Permohonan serta sesalinan Pernyataan dan Afidavit F Sokongan dan Perintah ini hendaklah melalui penyampaian secara kediri ke atas firma guaman yang bertindak bagi pihak Defendan Pertama, Ke-2 dan Ke-3, iaitu Tetuan Hasshahari & Partners yang beralamat di Space U8, 2-11-1, Persiaran Pasak Bumi, Bukit Jelutong Seksyen U8, 40150 Shah Alam, Selangor Darul Ehsan …

G **[30]** Thus, the service of the encl. 97 cause papers on Messrs Hasshahari & Partners was applied for and expressly allowed in the *ex parte* leave order under encl. 96. There was no need for the said cause papers to be served personally on the defendants.

[31] The defendants were aware of the *ex parte* leave order and did not H make any application to set aside the same. This was notwithstanding that the defendants' solicitors Messrs Hasshahari & Partners, had attended the first case management for encl. 97 on 17 April 2023 and all subsequent case managements until the full hearing in respect of the same.

[32] Accordingly, I see no merits in the objection made on the failure to I serve the encl. 97 cause papers on the defendants personally.

The Judicial Management Of The Fourth Defendant

[33] The defendants contended that the appointment of Judicial Managers by the High Court in the fourth defendant had made it impossible for them to comply with the terms of the judgment.

[34] In this regard, the judgment uses the words "menyerahkan atau menyebabkan serahan ke dalam jagaan plaintif semua dokumen" and "melaksanakan dan menyerahkan atau menyebabkan serahan ke dalam jagaan plaintif semua dokumen". This plainly means that the first to the third defendants are to surrender or cause to be surrendered to the plaintiff's custody all documents as provided for under the judgment.

[35] The first to the third defendants have not explained exactly why and how the fourth defendant's judicial management had prevented them from surrendering or causing to be surrendered to the plaintiff's custody all documents as provided for under the judgment.

[36] In the High Court case of *Eric Lau Man Hing v. Eramara Jaya Sdn Bhd & Ors* [2007] 2 MLJ 578, the respondents refused to purchase the petitioner's shares in the company at the ordered price according to the court order. The High Court held:

> [23]… Subsequent winding up and bankruptcy proceedings filed were not relevant to the issue at hand since one must look at the material or operative time of the breach of the order for the purpose of these committal proceedings. *The order clearly stipulated that the purchase of the petitioner's shares in the company by the respondents must be made within four days of the service of the order on the respondents.* In any event, s. 223 of the Act relied on by the respondents clearly provides that any disposition of the assets of a company, including the transfer of its shares, can be proceeded with where the court so orders, as was done in this case.
>
> …
>
> [26] … S*imilarly, the terms of the order of this court in the present case were clear, unambiguous, absolute and unqualified in that the respondents were to purchase the petitioner's 30% shareholding in the company for the sum of RM3,515,527.15 within four days of the service of the order on them. Having regard to the factual matrix of the present case as contained in the affidavits filed, I found that the respondents' disobedience of the order was blatant, wilful and deliberate.*
>
> …
>
> [31] *The respondents in the present case did not in any way satisfactorily show that their failure to comply with the order was casual, accidental or unintentional. On the contrary, their conduct went so far as to constitute stubborn opposition to the terms of the order made by this court,* even applying the test espoused on behalf of the defendants in *Steiner Products Ltd v. Willy Steiner Ltd* in the respondents' favour here, which, of course, is not the law.

A [32] In the circumstances, I found that the petitioner in these committal proceedings, which were *quasi*-criminal in nature, had proved beyond any reasonable doubt that the respondents had wilfully disobeyed the order of court and as such were guilty of contempt of court within the test laid down in cases such as *In Re Bramblevale Ltd* [1970] 1 Ch 128 (CA) and *Messrs Hisham, Sobri & Kadir v. Kedah Utara Development Sdn Bhd & Anor.*

B …

[34] In my view, *the respondents here were given both a fair opportunity to comply with the law (ie with the order) and had the capacity to do so (ie to purchase the petitioner's shares in the company in that there was no legal impediment to their doing so), as stated by Edgar Joseph Jr J above, so as to render them subject to*

C *punishment in accordance with the law.* (emphasis added)

[37] The first to the third defendants are disingenuous and merely using the judicial management of the fourth defendant, which came after the judgment, as an opportunity and unjustified excuse to avoid complying with their

D obligations under the judgment. The order for judicial management made against the fourth defendant was on 22 November 2020, which was more than a month after the judgment on 4 October 2020. The defendants were ordered to comply with the terms of the judgment within seven days from 4 October 2020. In other words, the defendants were already refusing and/or intentionally disobeying the terms of the judgment even before the

E appointment of the Judicial Managers over the fourth defendant.

[38] In any case, the defendants have not adduced any evidence that steps were taken to communicate with the Judicial Managers to retrieve the transfer documents in order to comply with the terms of the judgment.

F Clearly, as in the case of *Eric Lau Man Hing*, the defendants had ample opportunity to comply with the terms of the judgment but instead chosen to wilfully and deliberately disobey the judgment. There were no legal impediments to comply with the judgment even with the appointment of the Judicial Managers over the fourth defendant.

G **No Access To The Office Premises**

[39] The second and third defendants contended that they did not have access to the transfer documents because the same were under the control of the first defendant and the first defendant was not given access to his office premises, where the transfer documents were kept as the first defendant was

H chased out of his office.

[40] The second and third defendants are the shareholders and directors of the fourth and fifth defendants, respectively. They were named as individual defendants in the suit and the judgment. They had executed the transfer documents referred to in the judgment in their capacities as shareholders and

I directors. The judgment provided that they are jointly and severally liable with the first defendant in respect of the call option agreements.

[41] As such, the second and third defendants cannot hide behind the first defendant's bankruptcy or plead ignorance or plead that they are merely minority shareholders and not executive directors because all affairs were handled by the first defendant. The court must take cognisance of the fact that the fourth and fifth defendants are a "family business", the first and third defendants are husband and wife, the first and second defendants are brothers, and the second and third defendants are brother and sister-in-law.

[42] Further, the claim that the first defendant was involved in a physical altercation with the plaintiff's representative and was chased out of his room from the fourth defendant's office premises and thus no longer have access to the transfer documents following an alleged physical altercation, even if true, had occurred on 8 December 2022. This was two months after the judgment.

[43] In fact, when the show cause letter dated 4 January 2023 was issued, the physical altercation and being deprived of access to his office was never raised in the reply to show cause letter dated 9 January 2023 as a reason for the non-compliance of the judgment.

[44] Additionally, the first defendant had at all times access to his room in the office premises of the fourth defendant – the letter dated 15 December 2022 issued by the then Interim Judicial Managers of the fourth defendant clearly provides that both representatives of the fourth defendant (of which the first defendant is one) and the representatives of the plaintiff were authorised to assist the Interim Judicial Managers in managing the fourth defendant's daily operations. In fact, the first defendant had been attending office and co-signing the company documents of the fourth defendant such as the tolling invoices and purchase orders for the entirety of December 2022 up until he was adjudged bankrupt.

[45] It is abundantly clear to this court that the defendants never had any intention at all to comply with the terms of the judgment and are grasping at any events no matter how tenuous simply to justify their failure to comply with the order of this court. Their conduct post the judgment amplifies their contumelious and wilful refusal to comply with the terms of the judgment.

Plaintiff Needing To First Meet The Court Registrar To "Execute And Enforce" Under The Terms Of The Judgment

[46] The judgment provided the usual term that in the event the defendants fail to specifically perform the call option agreements and to surrender the transfer documents, the Registrar of the High Court is empowered to execute and enforce the transfer documents.

[47] The defendants contended that there can be no contempt of the judgment in this case because the plaintiff could avail itself of the proviso in the judgment to obtain from the Registrar of the High Court all the transfer

documents. In fact, it was contended by the defendants that until and unless the plaintiff has shown that it had taken the necessary steps to have the Registrar execute and enforce the transfer documents, no action for committal can be made against them. This contention was in fact the main ground proffered to contest the plaintiff's application under encl. 97 to commit the defendants.

[48] With respect, the defendants' said contention is simply untenable. The fact that the judgment had made provision empowering the Registrar of the High Court to execute and enforce the transfer documents, does not at all mean that the defendants can disobey the terms of the judgment. The proviso also does not mean that the defendants would not be subject to committal proceedings unless efforts were made to have the Registrar execute the transfer documents. It is not a substitution of the defendants' obligations to comply with the terms of the judgment at all.

[49] The defendants' interpretation, if accepted, would effectively render the first to the third defendants' obligations to surrender or cause to be surrendered to the plaintiff's custody the documents required under the judgment without purpose and redundant.

Conclusion

[50] Accordingly, it is my judgment that the plaintiff has established and proven beyond reasonable doubt that the first to the third defendants are in contempt of this court by deliberately, intentionally and wilfully disobeying and/or refusing to comply with the terms of the judgment that is refusing to surrender or cause to be surrendered the transfer documents required under the judgment to the plaintiff. To quote the Federal Court in the case of *T O* (*supra*):

> … In delivering his judgment, Sir W. Page Wood V.C. made these pertinent observations:
>
> > … the simple and only view is, that an *order must be obeyed, and that those who wish to get rid of that order must do so by the proper course of an appeal. So long as it exists, the order must be obeyed, and obeyed to the letter and any one who does not obey it to the letter is guilty of committing a wilful breach of it,* unless there be some misapprehension which all mankind are subject to, and which may mislead him upon the plain reading of the order. But, *in this case, that the order is plain there is no doubt.*
>
> …
>
> *An order even irregularly obtained cannot be treated as a nullity, but must be implicitly obeyed, until by proper application it is discharged.* This view is supported by authority. In dealing with the contention that the original order had been erroneously granted in *Fennings v. Humphrey* (1841) 4 Beav 1; 49 ER 237 Lord Langdale M.R. said: –

> It is clear, that a party who is served with an order may be guilty of contempt for disobedience, in a case in which the order ought not to have been made. *He is not to determine for himself, but ought to come to the court for relief, if advised that the order is invalid.*
>
> Nothing is more incumbent upon the courts than to preserve their proceedings from being misrepresented, nor is there anything of more pernicious consequence than to prejudice the minds of the public against the courts. (emphasis added)

[51] In the instant case, many opportunities were given to the first to the third defendants to comply with the terms of the judgment. They simply refused to comply. The case is not unlike that of *Teoh Seow Chiew* (*supra*), where the High Court found the alleged contemnors in contempt, holding thus:

> [122] It bears repetition that on 16 May 2017, the applicants and the two defendant companies entered into the Consent Order. *Despite many reminders to the defendants to perform and complete their Consent Order obligations, affidavit evidence shows that the defendants have failed to comply with a number of the terms of the Consent Order.* Although plainly stated in the Consent Order, there is no doubt that the defendants and the contemnors have failed to maintain the Basic Infrastructures until the same are taken over by the relevant authorities – failed to pay Air Selangor the outstanding utility bills until the Basic Infrastructures are taken over; failed to pay TNB the outstanding utility bills of the Water Pump House until the Basic Infrastructures are taken over (although bills were subsequently settled after the committal leave order was granted); failed to hand over the Basic Infrastructures to the relevant authorities and failed to relocate the Resource Centre (although this obligation may not justify a committal order, as discussed earlier).
>
> [123] *Any individual or company faced with an Order of Court is bound by and must obey that Order unless it is set aside. Any person who fails to adhere runs the risk of being held in contempt of Court. Evidence confirms that the four contemnors not only have full knowledge of the Consent Order but also made affidavit admissions in failing to comply with the Consent Order, making the case of contempt strongly established against them beyond reasonable doubt. Therefore, all four contemnors are found to be in contempt of Court. Enclosure 58 is allowed.*
>
> [124] For completeness, there are no merits to the setting aside application. There was no material non-disclosure on the part of the applicants and arguments such as that the defendants are at varying stages of compliance or still in the process of compliance or that some conditions were unforeseen when the Consent Order was agreed to simply cannot be accepted because *the fact remains that the terms on the obligations of the Consent Order have not been obeyed.* Enclosure 68 is therefore also dismissed. (emphasis added)

A **Sentencing**

[52] Learned counsel for the plaintiff submitted that this is a clear-cut case that the first to the third defendants have committed deliberate and intentional breach and/or non-compliance of the judgment.

B **[53]** I agree.

[54] The judgment was dated 4 October 2022 and the first to the third defendants were obliged to comply within seven days of the date of the judgment. Notwithstanding the aforesaid and despite repeated demands, the first to third defendants refused to comply with the terms of the judgment C even after more than one year had lapsed.

[55] I agree with learned counsel for the plaintiff that the reasons proffered by the first to the third defendants for their non-compliance are wholly without any merits.

D **[56]** The contention that under the terms of the judgment, in the event the first to the third defendants fail to deliver the transfer documents, the Registrar of the High Court is empowered to do so, and therefore the first to the third defendants could simply sit on the judgment without doing anything is disingenuous and is an outright disrespect of the order of this court. As stated, the proviso in the judgment that the Registrar is empowered E to execute the transfer documents, where applicable, is not a substitution of the first to the third defendants' obligations under the judgment. It is to ensure that the judgment is not thwarted by any refusal and/or failure on the part of the first to the third defendants to comply with the terms of the judgment.

F **[57]** The deliberate refusal without good reasons to comply with the terms of the judgment is an act of contempt. The fact that the first to the third defendants may have relied on the advice by their legal counsel, if this was in fact the case, is not an acceptable excuse. The proposition by learned counsel for the first to the third defendants, if correct, would render the G obligations of the first to the third defendants under the terms of the judgment redundant and completely voluntary. This is certainly not the case.

[58] Next, the claim that the transfer documents were purportedly stored in the fourth defendant's office premises and that the first defendant was H purportedly prohibited by the plaintiff from entering the fourth defendant's office premises following from a purported physical altercation on 8 December 2022, is also clearly a lame excuse.

[59] The terms of the judgment required the first to the third defendants to comply by delivering the transfer documents within seven days from I 4 October 2022. The purported altercation, even if this court accepts that it had actually happened, had occurred after the time stipulated for compliance had lapsed.

[60] In fact, as alluded to above, this purported physical altercation and prohibition of entry on 8 December 2022 was never raised at all in the first to the third defendants' reply dated 9 January 2023 issued by their solicitors to the show cause letter dated 4 January 2023 issued by the plaintiff's solicitors. It is clearly an afterthought. This is a further instance where the first to the third defendants had demonstrated a conscious and intentional action to refuse compliance.

[61] Further, after this court gave the first to the third defendants the benefits of doubt and ordered for a supervised excess to the fourth defendant's office to retrieve the transfer documents, the court was told that the first defendant could not locate these transfer documents and no plausible explanation for same was proffered giving credence to the inference that the issue of 'access' was disingenuous to begin with.

[62] This court then gave time for the first to the third defendants to reconstruct the transfer documents and in this regard, this court had to grant several extensions of time (*ie*, from 18 December 2023 until 24 January 2024) before the transfer documents were finally delivered to the plaintiff.

[63] There was no evidence of any active and urgent engagement with the company secretaries to comply with the terms of the judgment until the first to the third defendants were directed by this court to do so and with the possible custodial sentence hanging over their heads.

[64] Accordingly, I agree with learned counsel for the plaintiff that the first to the third defendants had shown no urgency to comply with the terms of the judgment. They only filed a stay application after the plaintiff had commenced committal proceedings and this also, only three days before the hearing.

[65] It is clear to this court that the first to the third defendants never had the intention to comply with the judgment, let alone to promptly do so. No good reason or acceptable justification was ever given by the first to the third defendants for all the delays in complying with the terms of the judgment whether from the date of the judgment, from the date of the show cause letter, or from the date of the hearing of encl. 97 on 8 December 2023. Indeed, they have not shown any remorse.

[66] In *Juris Technologies Sdn Bhd & Anor v. Foo Tiang Sin & Ors* [2019] 9 CLJ 617; [2019] 12 MLJ 785, Wong Kian Kheong J (as he then was) set out succinctly the discretion of the courts when a person is found guilty of contempt of court:

> [25] When the court finds a person guilty of contempt of court, the court has a discretion to impose the following sentence on the contemnor:
>
> (a) under O. 52 r. 7(1) of the RC , the court may suspend the execution of the order of committal:

A (i) for any period of time; and/or

(ii) based on any term or condition – as may be specified by the court.

When the court suspends the execution of a committal order according to O. 52 r. 7(1) of the RC, the court may admonish, caution or reprimand B the contemnor;

(b) the court may discharge a contemnor pursuant to O. 52 r. 8(1) and (2) of the RC;

(c) the court may order a contemnor to give security for his or her good behavior (security for good behaviour). The court's power to order C security for good behaviour has been preserved by O. 52 r. 9 of the RC;

(d) the court may impose a fine to be paid by a contemnor. This power has been retained by O. 52 r. 9 of the RC. When the court orders a fine to be paid by a contemnor, the court may specify: D

(i) a time period for the contemnor to pay the fine;

(ii) the fine to be paid in instalments; and/or

(iii) a period of imprisonment of the contemnor in the event the contemnor fails to pay the fine – please see Noorin Badaruddin E JC's (as she then was) judgment in the High Court case of *BYD Auto Industry Co Ltd v. Amdac (M) Sdn Bhd* [2017] 11 MLJ 513; [2017] 5 CLJ 371 at para. 59.

A daily fine may be imposed for a 'continuing' contempt of court which has not yet to be purged by the contemnor – *BYD Auto Industry*, at F para. 59;

(e) a custodial sentence may be ordered for a contemnor. Neither the RC nor any written law in Malaysia provides for a maximum imprisonment sentence for contempt of court.

According to s. 14(1) of the United Kingdom's Contempt of Court G Act 1981 ('the CCA (UK)'), a court in England and Wales can commit a person to prison for contempt of court for a term not exceeding two years for committal by a superior court and a term not exceeding one month in the case of committal by an inferior court. Section 12(1) of the India's Contempt of Courts Act 1971 ('the CCA (India)') provides that Indian courts can only impose an H imprisonment sentence up to six months and/or a fine not exceeding 2,000 Indian Rupees. It is hoped that our legislature may provide for a maximum imprisonment and fine sentence for contempt of court along the lines of CCA (UK) and CCA (India); and

I (f) the court may order a contemnor to pay costs of the committal proceedings to the applicant under O. 59 rr. 3(1) and/or (2) of the RC. Costs may be awarded on a standard basis (please see O. 59 r. 16(2)(a) and (3) of the RC) or an indemnity basis (please refer to

O. 59 r. 16(2) and (4) of the RC). In the English High Court case of *EMI Records Ltd v. Ian Cameron Wallace Ltd and another* [1982] 2 All ER 980 at p 984, Robert Megarry VC (sitting with the Chief Taxing Master and Mr Harvey Crush as assessors) explained that the court may award costs on an indemnity basis in cases of contempt of court.

Order 59 r. 24 of the RC provides the court's discretionary power to grant interest on costs from the date of award of costs until the date of full payment of costs.

[26] Learned counsel for the applicants and respondent have cited many cases regarding the appropriate sentence to be meted by the court to the respondent for a breach of the *ex parte* restraining order. Sentences are imposed for contempt of court in the exercise of the courts' discretion. The exercise of such a discretion is dependent on the particular facts of the case in question. As such, cases regarding sentences meted for contempt of court provide mere guidelines and cannot constitute binding legal precedents from the view point of the *stare decisis* doctrine.

[67] In *Low Swee Siong v. Tan Siew Siew* [2011] 9 CLJ 536; [2011] 2 MLJ 501, the High Court stated that as the defendant has yet to purge his contempt despite the court giving him three previous chances to comply with the court orders, a fine of RM20,000 was imposed and imprisonment to be meted out if he defaults on the payment.

[68] In the present case, this court has taken note of the fact that the contempt has been purged but only after much time had been wasted and opportunities given.

[69] Accordingly, it is my judgment that a proper sentence in this case is an order that the first to the third defendants be each fined a sum of RM25,000 to be paid within 21 days from 1 March 2024 and in default to be imprisoned for seven days. The first to the third defendants are to jointly and severally pay the plaintiff the costs for the committal proceedings in the sum of RM75,000 subject to the allocatur.